U.S. Department of Homeland Security
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Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date:

IN RE: Applicant: [redacted] AUG 09 2004

APPLICATION: Application for Permission to Reapply for Admission into the United States after Deportation or Removal under section 212(a)(9)(A)(iii) of the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(9)(A)(iii)

ON BEHALF OF APPLICANT: SELF-REPRESENTED

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The application for permission to reapply for admission after removal was denied by the Director, Vermont Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of the Dominican Republic who on November 26, 1990, was admitted to the United States with a nonimmigrant visa for a period of three months, expiring on February 25, 1991. The applicant remained in the United States beyond her authorized stay and married a U.S. citizen on November 21, 1991. The record of proceeding reveals that her U.S. citizen spouse withdrew the Petition for Alien Relative (Form I-130) filed on her behalf after admitting that he was offered $1,500.00 in order to marry the applicant. On January 11, 1993, an Immigration Judge granted the applicant voluntary departure in lieu of deportation until January 15, 1993. The record further reveals that the applicant departed the United States on April 11, 1993. The applicant's failure to depart on or prior to January 15, 1993, changed the voluntary departure order to an order of deportation. The applicant is the beneficiary of an approved Form I-130 filed on her behalf by her second U.S. citizen spouse. The director determined that the applicant is inadmissible pursuant to section 212(a)(9)(B)(ii) of the Immigration Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(B)(ii). The applicant filed an application for permission to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act, 8 U.S.C. 1182(a)(9)(A)(iii) in order to reside with her U.S. citizen spouse.

The director determined that the unfavorable factors in the applicant's case outweighed the favorable factors. The director denied the applicant's Application for Permission to Reapply for Admission After Removal (Form I-212) accordingly. *See Director's Decision* dated July 17, 2003.

Section 212(a)(9) of the Act provides, in pertinent part, that:

> (B) Aliens Unlawfully Present. -
>
> > (ii) Construction of unlawful presence. -For purposes of this paragraph, an alien is deemed to be unlawfully present in the United States if the alien is present in the United States after the expiration of the period of stay authorized by the Attorney General or is present in the United States without being admitted or paroled.

A review of the documentation in the record of proceeding reveals that an Immigration Judge granted the applicant voluntary departure until January 15, 1993. The applicant failed to surrender for removal or depart from the United States within the allotted time and she is therefore inadmissible pursuant to section 212(a)(9)(A)(ii) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(a)(9)(A)(ii).

Section 212(a)(9). Aliens previously removed.-

> (A) Certain alien previously removed.-
>
> > (i) Arriving aliens.- Any alien who has been ordered removed under section 235(b)(1) or at the end of proceedings under section 240 initiated upon the alien's arrival in the United States and who again seeks admission within five years of the date of such removal (or within 20 years in the case of a second or subsequent removal or at any time in the case of an alien convicted of an aggravated felony) is

inadmissible.

(ii) Other aliens.- Any alien not described in clause (i) who-

(I) has been ordered removed under section 240 or any other provision of law, or

(II) departed the United States while an order of removal was outstanding, and seeks admission within 10 years of the date of such alien's departure or removal (or within 20 years of such date in the case of a second or subsequent removal or at any time in the case of an aliens convicted of an aggravated felony) is inadmissible.

(iii) Exception. – Clauses (i) and (ii) shall not apply to an alien seeking admission within a period if, prior to the date of the aliens' reembarkation at a place outside the United States or attempt to be admitted from foreign continuous territory, the Attorney General has consented to the alien's reapplying for admission.

On appeal the applicant's spouse states that her previous marriage was not a fraudulent one and that the applicant stayed out of the United States for nine years and she is planning to return to her country of origin in order to proceed with her immigrant visa

The record of proceeding reflects that the applicant departed the United States after the expiration of her voluntary departure and reentered illegally on an unknown date, prior to May 29, 2002. She has never been granted permission to reapply for admission therefore she is subject to the provision of section 241(a) (5) of the Act.

Section 241(a) detention, release, and removal or aliens ordered removed.-

(5) reinstatement of removal orders against aliens illegally reentering.- if the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act, and the alien shall be removed under the prior order at any time after reentry.

Notwithstanding the arguments on appeal, section 241(a)(5) of the Act is very specific and applicable. The applicant is subject to the provision of section 241(a)(5) of the Act, and he is not eligible for any relief under this Act.

Matter of Martinez-Torres, 10 I&N Dec. 776 (reg. Comm. 1964) held that an application for permission to reapply for admission is denied, in the exercise of discretion, to an alien who is mandatorily inadmissible to the United States under another section of the Act, and no purpose would be served in granting the application.

No purpose would be served in the favorable exercise of discretion in adjudicating the application to reapply for admission into the United States under section 212(a)(9)(A)(iii) of the Act since the applicant is subject to reinstatement of his removal order. The applicant is not eligible for any relief under the Act and the appeal will be dismissed.

ORDER: The appeal is dismissed.